

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,093

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of

Social Welfare denying her application for Food Stamps based on the value of an automobile which was determined to be a

resource in excess of Department maximums.

FINDINGS OF FACT

1. The petitioner and her husband have two small children of their own. In the summer months, the petitioner's husband's three children from a prior marriage live with them as well. In order to accommodate the five children (and two car seats), the petitioner and her husband bought a van last Fall.

2. The van, a 1993 Dodge Caravan, was purchased for \$18,330.00, all of which was financed by the petitioner and her husband through a five year loan from the state credit union after they found a co-signer, which was required because of their low income. The payments on the car are deducted from the husband's paycheck, which he receives as a guard at a state correctional facility, at the rate of \$163.00 every two weeks. At the time of the hearing on July 1, 1993, approximately \$14,000.00 was still owed on the car.

3. The petitioner and her husband also own a 1986 Dodge Aries which the husband uses primarily to commute back and forth to work, a trip which is twenty-seven miles each way. Although he sometimes drives the van to work, it is primarily used by the petitioner to transport the children to activities and medical appointments and to run family errands, such as shopping. The family lives about two and a half miles outside of a large town. Although the husband has been labeled by the Veteran's Administration as having a ten per cent disability due to a back problem, he is still able to walk and function in all ways and works full-time at his job. Neither he nor anyone else in the family needs a vehicle because of a

disability of any kind.

4. On June 8, 1993, the petitioner applied for Food Stamps. After reviewing the application, the Department assessed the petitioner's cars against its \$4,500.00 maximum car value limit. The Dodge Aries was found to be under the \$4,500.00 limit. However, it was determined based on "blue book" retail sales figures that the Dodge Caravan had a value of \$13,566.00. The Department decided, therefore, that \$9,066.00 (the \$13,566.00 value minus the \$4,500.00 disregard) had to be attributed to the family as a resource when determining their eligibility. That figure was added to a few hundred dollars in other assets possessed by the family (from bank accounts) to reach a total figure of \$9,685.00 in countable resources. As a Food Stamp applicant may have no more than \$2,000.00 in countable resources, the Department determined that the family had \$7,685.00 (\$9,685.00 countable resources minus the \$2,000.00 allowable limit) in excess resources. On June 9, 1993, the family was mailed a notice advising them that their Food Stamp application had been denied due to excess resources.

5. The petitioner appealed the Department's decision the day she received it. While her case was awaiting a hearing, the Department reviewed the matter and decided to assign a lesser value to the van based on a newly issued "blue book" which for the first time contained a loan value (as opposed to the previously used retail value) for the petitioner's van. The loan value is the lowest value found in the "blue book" and for the petitioner's van was set at \$10,650.00. After subtracting the \$4,500.00 limit from that amount and adding it back in with current bank account figures, (\$6,150.00 for the car and \$60.00 for bank accounts), it was determined that the petitioner's family actually had \$6,210.00 in countable resources. As they are allowed to have \$2,000.00 in resources, the Department sent the petitioners a review letter on June 23, 1993, advising them that \$4,210.00 was the amount of their excess resource and that the family was, therefore, still ineligible for Food Stamps.

6. The petitioner does not argue with the figures used by the Department as to the value of her vehicle but takes issue with the Department's determination that she has an "excess" resource for several reasons. First, she states that because she and her husband had no money to put down when they purchased the vehicle, they would not be allowed to finance a used car and had to buy a new one. Departmental suggestions to her that she could avoid the resource problem by leasing a car were unrealistic for her for the same reason, a lack of a down payment or deposit. She also feels that it was wise, and not extravagant, to buy a new car because it came with a warranty. It was her estimate, based on reading classified ads, that a similar used van would cost close to \$10,000.00 in good running condition, the ownership of which would have still placed her over the \$6,500.00 limit (the car limit added to the resource limit). Second, the petitioner argues that she owes more on the car (\$14,000.00) than she could sell it for (\$10,650.00) and that she could not get a loan on it because it is already under a large encumbrance. Therefore, she argues that she could not turn the van into cash to pay for groceries or anything else.

ORDER

The Department's decision is affirmed.

REASONS

The regulations governing the Food Stamp program require that all resources of a household be evaluated when determining eligibility with certain specific exclusions, among those exclusions being "licensed vehicles" in certain circumstances. F.S.M. § 273.8 (e)(3). The method for setting a valuation

on vehicles is set forth in detail in the regulations which provide, in pertinent part, as follows:

The fair market value of licensed automobiles, trucks, and vans will be determined by the value of those vehicles as listed in publications written for the purpose of providing guidance to automobile dealers and loan companies. Publications listing the value of vehicles are usually referred to as "blue books". The State agency shall insure that the blue book used to determine the value of licensed vehicles has been updated within the last 6 months. The National Automobile Dealers Association's (NADA) Used Car Guide Book is a commonly available and frequently updated publication.

The State agency shall assign the wholesale value to vehicles. If the term "wholesale value" is not listed in a particular blue book, the State agency shall assign the listed value which is comparable to the wholesale value. The State agency shall not increase the based value of a vehicle by adding the value of low mileage or other factors such as optional equipment.

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F.S.M. § 273.8(h)

The regulations also set forth in a very detailed way,
criteria for counting or excluding the value of a licensed
vehicle:

The value of licensed vehicles shall be excluded or counted as a resource as follows:

1. The entire value of any licensed vehicle shall be excluded if the vehicle is:

i used primarily (over 50 percent of the time the vehicle is used) for income producing purposes such as, but not limited to, a taxi, truck, or fishing boat. Licensed vehicles which have previously been used by a self-employed household member engaged in farming but are no longer used over 50 percent of the time in farming because the household member has terminated his/her self-employment from farming shall continue to be excluded as a resource for one year from the date the household member terminated his/her self-employment from farming;

ii annually producing income consistent with its fair market value, even if used only on a seasonal basis;

iii necessary for long distance travel, other than daily commuting, that is essential to the employment of a household member (or ineligible alien or disqualified person whose resources are being considered available to the household), for example, the vehicle of a traveling sales person or of a migrant farmworker following the work stream;

iv used as the household's home and, therefore, excluded under paragraph (e)(1) of this section; or

v necessary to transport a physically disabled household member (or ineligible alien or disqualified person whose resources are being considered available to the household) regardless of the purpose of

such transportation (limited to one vehicle per physically disabled household member). A vehicle shall be considered necessary for the transportation of a physically disabled household member if the vehicle is specially equipped to meet the specific needs of the disabled person or if the vehicle is a special type of vehicle that makes it possible to transport the disabled person. The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member.

2. The exclusion in parts H.1.i through iv will apply when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when a fishing boat is frozen in and cannot be used.

3. All licensed vehicles not excluded under (h)(1) of this section shall individually be evaluated for fair market value and that portion of the value which exceeds \$4,500 shall be attributed in full toward the household's resource level, regardless of any encumbrances on the vehicles. For example, a household owning an automobile with a fair market value of \$5,500 shall have \$1,000 applied toward its resource level. Any value in excess of \$4,500 shall be attributed to the household's resource level, regardless of the amount of the household's investment in the vehicle, and regardless of whether or not the vehicle is used to transport household members to and from employment. Each vehicle shall be appraised individually. The fair market values of two or more vehicles shall not be added together to reach a total fair market value in excess of \$4,500.

4. Licensed vehicles shall also be evaluated for their equity value, except for:

i Vehicles excluded in paragraph (h)(1) of this section;

ii One licensed vehicle per household, regardless of the use of the vehicle; and

iii Any other vehicle used to transport household members (or an ineligible alien or disqualified household member whose resources are being considered available to the household) to and from employment or to and from training or education which is preparatory to employment, or to seek employment in compliance with the employment and training criteria. A vehicle customarily used to commute to and from employment shall be covered by this equity exclusion during temporary periods of unemployment. The equity value of licensed vehicles not covered by this exclusion, and of unlicensed vehicles not excluded by paragraphs (e)(3), (4), or (5) of this section shall be attributed toward the household's resource level.

5. In the event a licensed vehicle is assigned both a fair market value in excess of \$4,500 and an equity value, only the greater of the two amounts shall be counted as a resource. For example, a second car which is not used by a household member to go to work will be evaluated for both fair market value and for equity value. If the fair market value is \$5,000 and the equity value is \$1,000, the household shall be credited with only the \$1,000 equity value, and the \$500 excess fair market value will not be counted.

6. In summary, each licensed vehicle shall be handled as follows: First it will be evaluated to determine if it is exempt as an income producer or as a home. If not exempt, it will be evaluated to determine if its

fair market value exceeds \$4,500. If worth more than \$4,500, the portion in excess of \$4,500 for each vehicle will be counted as a resource. The vehicle will also be evaluated to see if it is equity exempt as the household's only vehicle or necessary for employment reasons. If not equity exempt, the equity value will be counted as a resource. If the vehicle has a countable market value of more than \$4,500 and also has a countable equity value, only the greater of the two amounts shall be counted as a resource.

F.S.M. § 273.8(h)

Under the above regulations, the petitioner's van cannot be excluded from the resource evaluation process because it is not used primarily to produce income; is not necessary for long distance travel other than daily commuting essential to the employment of a household member; is not used as the household's home; and is not necessary to transport a physically disabled household member. Therefore, the van is subject to an evaluation procedure which begins with a determination of its "wholesale value".

It is not clear whether the "loan value" used by the Department is the "wholesale" value. However, as the loan value is the lowest in the "blue book" and as the petitioner does not object to that valuation, it will be assumed that they are either equal or that the loan value is less. For purposes of this discussion, it will be assumed that the \$10,650.00 loan value is the fair market value referred to in the regulations. Therefore, the fair market value for this car in excess of the \$4,500.00 limit is \$6,150.00.

As a second vehicle which is not usually used by a household member to go to work, the petitioner's van is also subject to an equity assessment. In the petitioner's case, the equity amount would be zero because the \$14,000.00 still owed on the van is far in excess of its \$10,650.00 fair market value. See paragraph (h)(5) above. Under this regulation the greater amount, not the lesser, as between the equity and fair market value in excess of \$4,500.00 must be counted as a resource. See paragraph (h)(5) above. As the fair market amount in excess of \$4,500.00, or \$6,150.00, is greater than the zero equity, it must be counted as a resource to the petitioner under the equity assessment method, as well.

Based strictly on the regulations, it must be found that the Department's assessment of the resource value of the petitioner's van is in accordance with the regulations. As such, the Board is bound to affirm the Department's decision. 3 V.S.A. § 3091(d). However, the petitioner's point that the van in reality is not a resource which she can convert into cash is well-taken and suggests that some reform in this area of federal law (the state regulations on resources are mandated by and based upon federal regulations) may be in order to assure fairness to applicants. The petitioner indicated at the hearing that she has already contacted her congressional representatives with regard to this matter.

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